



U.S. Citizenship
and Immigration
Services

FILE:

Office: TEXAS SERVICE CENTER

Date:

OCT 08 2004

IN RE:

Petitioner:
Beneficiary

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marif Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not submitted the required documentation of qualifying tax-exempt status.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 20, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the petition, counsel states "last year [the beneficiary] was with the Antioch Missionary Baptist Church in Hanford, California. The church submitted an I-360 [petition] on April 30, 2001. However, because both churches are with the same Association here in the United States, the association saw a great need for a Hispanic Pastor in the Northwest Arkansas area and decided to transfer [the beneficiary] to Arkansas." The beneficiary's file confirms that the Antioch Missionary Baptist Church

(AMBC) filed a petition on the beneficiary's behalf, but subsequently withdrew the petition before a decision had been rendered.

In a letter dated January 12, 2002, L. Scott Bates, pastor of the petitioning church, states that the beneficiary began working as a pastor at AMBC in August 1998, and that the beneficiary would begin working for the petitioner on January 13, 2002. The initial submission contains nothing from AMBC to corroborate the beneficiary's claimed work there.

states that the beneficiary's "work will include: preaching, teaching, visitation, administration, outreach and various ministry responsibilities. He will lead worship, baptize and conduct the Lord's Supper and other official religious duties. He will continue to be a minister associated with the American Baptist Association."

The documentation submitted with AMBC's own prior petition, in the same file, contains an affidavit from treasurer of AMBC, who states that the beneficiary "will begin his ministry with us on August 15, 1998." The affidavit is dated July 29, 1998. The affidavit cannot reliably attest to events that took place after the affidavit was written; at best, it demonstrates AMBC's intent to begin employing the beneficiary on August 15, 1998. The record of proceeding regarding AMBC's petition contains no documentation indicating that the beneficiary had actually begun working there, let alone that the beneficiary worked there continuously (full-time and without significant interruption) since March 2000.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience" covering all of the two-year qualifying period. The director specifically stated that the evidence should include "pay stubs." In response, the petitioner submits a letter from apparently L. replacement as pastor of the petitioning church. describes the beneficiary's duties at the petitioning church. We note that states that the beneficiary began working for the petitioner on January 8, 2002, but an earlier letter from the same church, dated January 12, 2002, indicated that the beneficiary had not yet begun working there. A copy of the January 12, 2002 letter was submitted along with s new letter. An unsigned "Job Description" on the petitioner's letterhead states the beneficiary's job title as "Missionary Pastor," a phrase that, heretofore, had not appeared in any document submitted by the present petitioner or by AMBC.

The petitioner's response to the director's request for information did not include any documentation from AMBC, or from any other source (such as the California Employment Development Department) that could credibly document or verify the beneficiary's experience at that church.

In his personal resume, the beneficiary states that he "preached (three times a week)" at AMBC, and undertook other activities on behalf of the church. The beneficiary also asserts that he earned a master's degree between September 1999 and May 2001 at Fresno Missionary Baptist Institute and Theological Seminary. The beneficiary does not state whether he studied full-time or part-time, nor does he specify whether his studies prevented him from working full-time as a pastor. Part-time ministerial work, interrupted by full-time studies, is not continuous religious work for immigration purposes. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The petitioner submits copies of monthly reports that the beneficiary prepared at AMBC and at the petitioning church. Many of the AMBC reports are dated only by month, rather than year. We will discuss these reports in greater detail further below.

The petitioner indicated that it pays the beneficiary \$602 per week, but the petitioner submitted no documentation to show that it had, in fact, paid the beneficiary, despite the director's specific request for evidence of such payments.

The director denied the petition, stating that the petitioner had failed to provide persuasive evidence that the beneficiary worked continuously in the position offered, throughout the two-year qualifying period. On appeal, counsel discusses the director's request for evidence and the petitioner's response to that notice. Counsel states "[w]e did not at that time, provide pay stubs and I am submitting those with this submission." The appeal includes photocopies of canceled checks from AMBC and the petitioner. Counsel offers no explanation for the admitted failure to submit this evidence when the director first requested it.

Because the director had specifically requested pay receipts and the petitioner admittedly did not provide them when first asked to do so, the AAO is under no obligation to accept such evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Even if we were to disregard *Soriano* and accept the petitioner's untimely submission of the canceled checks, another issue arises from scrutiny of the documents of record. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. Thus, the alien's duties must have been essentially unchanged throughout the two-year qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for some or all of the relevant two year period.

As noted above, AMBC had previously filed a petition on the beneficiary's behalf. The initial correspondence associated with that petition repeatedly, consistently, and exclusively refers to the beneficiary as a "pastor." The documents of AMBC's petition never refer to the beneficiary as a "missionary" for that church. After the beneficiary changed employers, [REDACTED] asserted that the beneficiary "is going to be a Missionary" for the new employer (i.e., the current petitioner). [REDACTED] did not state that the denomination considers the titles "pastor" and "missionary" to be interchangeable, nor has [REDACTED] ever stated that the beneficiary was a "missionary" at AMBC.

In the monthly reports from the petitioning church, the beneficiary refers to himself as a missionary, rather than a pastor. When discussing his activities, he mentions proselytizing by visiting homes and distributing pamphlets, but he does not mention preaching, performing sacraments, or any other duties reserved for authorized clergy. The reports do not contain any indication that the beneficiary has engaged in the duties of a "minister/Pastor" previously listed by [REDACTED] such as "preaching, teaching, visitation, administration, outreach," leading worship, or performing baptisms. In the resume submitted with the above reports, the beneficiary lists the typical duties of a pastor, but does not mention the house-to-house proselytizing and pamphleteering that he had personally reported in the above documents.

The beneficiary, in his resume, states that he has worked as a "Missionary Pastor" for both the petitioner and AMBC. This document, prepared after the fact, does not overcome the fact that no AMBC official ever referred to the beneficiary as a "Missionary Pastor," nor does it explain what appears to be an abrupt change in the beneficiary's duties coincident with his change of employers, as reflected in his own monthly reports.

The resume identifies the petitioner's pastor as Todd Anderson, indicating that the resume was prepared fairly recently, after the departure of L. Scott Bates.

Furthermore, we note that the petitioner had specifically stated that the reason for hiring the beneficiary in January 2002 was to fill "a great need for a Hispanic Pastor in the Northwest Arkansas area." As of April, 2002, the beneficiary reported "[o]ur Hispanic congregation is growing; the average for the Month of April was 12 people for our Sunday Services." It is far from clear that a congregation of twelve required the full-time services of "a Hispanic Pastor." (The further growth of the congregation subsequent to April 2002 is irrelevant to the question of whether the petitioner required a full-time Hispanic pastor in January 2002, when the petitioner's Hispanic congregation numbered less than twelve.) The beneficiary's function appears to be not so much to serve the existing Hispanic congregation, but rather to build such a congregation by recruiting from the community.

The petitioner has shown that the beneficiary has been involved, to some degree, with the petitioning church and AMBC during the qualifying period, but the beneficiary's duties appear to have changed significantly during that time, according to the beneficiary's own contemporaneous reports of his activities during that time. The available evidence suggests that the beneficiary was first a pastor, then a missionary, and that the petitioner labeled him a "missionary pastor" after the fact in order to reconcile the disparate duties of the positions.

We affirm the director's finding that the petitioner has not established that the beneficiary was continuously engaged as a minister throughout the two-year qualifying period.

The remaining issue concerns the issue of tax exemption. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

L. Scott Bates, in the introductory letter accompanying the initial filing, stated "we are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. Our tax identification number is 71-6086059." This submission did not include any documentation from the Internal Revenue Service (IRS) itself to support these claims. We note that the assignment of an employer identification number is not *prima facie* evidence of tax-exempt status.

In response to the director's request that the petitioner submit documentation from the IRS, the petitioner has submitted a copy of the IRS exemption letter issued to AMBC in May 2001. The letter does not mention the petitioning church.

The director, in denying the petition, stated that the above letter does not establish a group exemption that covers the petitioning church; rather, it establishes only that AMBC itself is considered a tax-exempt church. On appeal, the petitioner submits a copy of the instructions for IRS Form 1023, Application for Recognition

of Exemption. These instructions state that churches "may be considered tax-exempt under section 501(c)(3) even if they do not file Form 1023." The instructions go on to say that "these organizations may choose to file Form 1023 in order to receive a determination letter that recognizes their section 501(c)(3) status," because such status "provides certain incidental benefits such as . . . public recognition of tax-exempt status."

The purpose of submitting the above information is, apparently, to make the argument that the petitioner is a church; churches are automatically tax-exempt; and, therefore, the petitioner must be presumed to be tax-exempt even if there is no documentation to establish this. This argument, however, fails upon examination of the relevant regulation at 8 C.F.R. § 204.5(m)(3)(i). That regulation specifically requires *documentation* showing that the employer is tax-exempt (i.e., an IRS recognition letter), or else *documentation* (including a completed Form 1023) that the IRS *would* require from the employer, should it choose to apply for such recognition. The regulatory requirement, therefore, is not satisfied by the general statement that the IRS does not require churches to file Form 1023. Otherwise, the above regulation would be completely redundant.

The reason for this is clear. By submitting evidence of IRS recognition (or the documentation necessary to secure that recognition), the petitioner establishes that it is, in fact, what it purports to be (i.e., a tax-exempt religious organization). By simply noting that churches do not need to file Form 1023, the petitioner leaves open the question of whether it is, in fact, a *bona fide* church.

The petitioner submits a "Certificate of Good Standing" issued by the Arkansas Secretary of State, indicating that the petitioner is "authorized to transact business in the State of Arkansas as a Non-Profit Corporation." This state-issued document is not documentation of *federal* recognition by the IRS.

Despite repeated opportunities to do so, the petitioner has not submitted the documentation required by 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Therefore, the petitioner has failed to meet a basic evidentiary requirement and we affirm the director's finding to that effect.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.